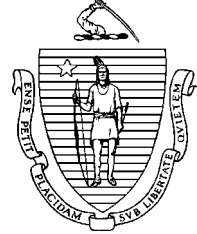


Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 701

IN THE MATTER
OF
THOMAS HALUCH

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Thomas Haluch pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, § 4(j).

On November 12, 2003, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Haluch. The Commission has concluded its inquiry and, on February 11, 2004 found reasonable cause to believe that Haluch violated G.L. c. 268A, § 23(b)(2).

The Commission and Haluch now agree to the following findings of fact and conclusions of law:

-Findings of Fact-

1. Haluch is the Ludlow Department of Public Works ("DPW") Commission Chairman.
2. The Massachusetts Municipal Wholesale Electric Company ("MMWEC"), a non-profit public corporation, is a state agency for purposes of G.L. c. 268A. In June 2002, MMWEC began construction of a \$10 million gas pipeline in Ludlow. The 5.6-mile long pipeline ran through approximately 45-50 public and private properties and ten public roadways.
3. The DPW issued 10 permits to MMWEC with regard to the pipeline as it intersected public ways. With regard to construction through private ways, plans were submitted to the DPW for review. The DPW was also responsible for the general oversight of the pipeline, including reconstruction of public ways, coordinating with other utilities, ensuring proper cover of the road surface of the pipeline in order to maintain the integrity of the road surface and ensuring proper depth of the pipeline.

4. Much of this MMWEC oversight work was done by the DPW director and the highway supervisor, both of whom are appointed by and report to the DPW Commissioners.

5. MMWEC negotiated with each private property owner for access to their properties in order to lay the pipe. Haluch has a working farm in Ludlow that was impacted by the pipeline. MMWEC paid Haluch for the use of his property to lay the pipe, with the understanding that MMWEC restore Haluch's property to its original condition.

6. After MMWEC installed the pipeline, it began restoring Haluch's property. Haluch was dissatisfied with the restoration work performed by MMWEC and the length of time it was taking to complete the work, which he asserted, interfered with his farm operation.

7. Haluch brought his concerns to MMWEC officials and offered to do the restoration work himself in exchange for a certain payment. The MMWEC officials informed Haluch what they believed the restoration costs should be based on a preliminary field evaluation. Haluch and MMWEC were several thousand dollars apart.

8. During several discussions about restoration with MMWEC officials, Haluch made statements referring to his DPW chairman position. He also stated that he wielded a lot of power and influence in the town, that he would make sure the pipeline's bonds were not released, and that he could shut down the pipeline.

9. Unresolved disputes between MMWEC and private property owners over restoration usually results in litigation. Consequently, resolutions of such matters can take years.

10. MMWEC officials promptly gave Haluch the payment he was seeking to resolve the matter.

11. Haluch's position as DPW chairman and the above statements played a significant role in causing MMWEC to expedite settlement.¹

12. Haluch never took any action inimical to MMWEC.

-Conclusions of Law-

13. Section 23(b)(2) prohibits a public employee from knowingly or with reason to know using or attempting to use his position to obtain for himself or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

14. As the DPW Commission chairman, Haluch is a municipal employee as that term is defined in G.L. c. 268A, § 1.

15. Haluch knew or had reason to know he was using his DPW position to gain advantage in his private dealings with MMWEC when during several private discussions with MMWEC, he referred to himself as the DPW chairman and repeatedly made threatening statements that indicated he could use that position to adversely affect MMWEC's interests. This was particularly so where at the time he made such statements, the DPW was actively involved in the oversight of the MMWEC pipeline.

16. Haluch's use of his DPW position in his negotiations with MMWEC secured for him a substantially valuable privilege in that it caused MMWEC to quickly settle the dispute on terms favorable to Haluch allowing Haluch to receive his money immediately (instead of potentially waiting for years) and without incurring legal costs.

17. This privilege was unwarranted and not properly available to similarly situated persons because public employees may not threaten to use their official position or powers to obtain an advantage for themselves in a private dispute.

18. Therefore, by knowingly or with reason to know repeatedly using his position as DPW chairman to secure for himself an unwarranted privilege of substantial value not properly available to similarly situated individuals, Haluch violated §23(b)(2).

-Resolution-

In view of the foregoing violation of G.L. c. 268A by Haluch, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Haluch:

- (1) that Haluch pay to the Commission the sum of \$3,500 as a civil penalty for his repeated violations of G.L. c. 268A, §23(b)(2); and
- (2) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: March 11, 2004

¹Where the settlement was reached before the parties had the opportunity to fully assess the outstanding restoration costs, it is unclear whether the settlement amount was reasonable. Furthermore, where the incident occurred more than a year and a half ago and substantial restoration work has since occurred, it is unlikely that an accurate assessment of the restoration costs could be determined at this time.